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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

### SUPREME COURT OF THE UNITED STATES

### **Syllabus**

# FRIENDS OF THE EARTH, INC., ET AL. v. LAIDLAW ENVIRONMENTAL SERVICES (TOC), INC.

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 98-822. Argued October 12, 1999- Decided January 12, 2000

Defendant-respondent Laidlaw Environmental Services (TOC), Inc., bought a facility in Roebuck, South Carolina, that included a wastewater treatment plant. Shortly thereafter, the South Carolina Department of Health and Environmental Control (DHEC), acting under the Clean Water Act (Act), 33 U. S. C. §1342(a)(1), granted Laidlaw a National Pollutant Discharge Elimination System (NPDES) permit. The permit authorized Laidlaw to discharge treated water into the North Tyger River, but limited, among other things, the discharge of pollutants into the waterway. Laidlaw began to discharge various pollutants into the waterway; these discharges, particularly of mercury, an extremely toxic pollutant, repeatedly exceeded the limits set by the permit.

On April 10, 1992, plaintiff-petitioners Friends of the Earth and Citizens Local Environmental Action Network, Inc. (referred to collectively here, along with later joined plaintiff-petitioner Sierra Club, as "FOE"), notified Laidlaw of their intention to file a citizen suit against it under the Act, 33 U. S. C. §1365(a), after the expiration of the requisite 60-day notice period. DHEC acceded to Laidlaw's request to file a lawsuit against the company. On the last day before FOE's 60-day notice period expired, DHEC and Laidlaw reached a settlement requiring Laidlaw to pay \$100,000 in civil penalties and to make "every effort" to comply with its permit obligations.

On June 12, 1992, FOE filed this citizen suit against Laidlaw, alleging noncompliance with the NPDES permit and seeking declaratory and injunctive relief and an award of civil penalties. Laidlaw moved for summary judgment on the ground that FOE lacked Article III standing to bring the lawsuit. After examining affidavits and

deposition testimony from members of the plaintiff organizations, the District Court denied the motion, finding that the plaintiffs had standing. The District Court also denied Laidlaw's motion to dismiss on the ground that the citizen suit was barred under §1365(b)(1)(B) by DHEC's prior action against the company. After FOE initiated this suit, but before the District Court rendered judgment on January 22, 1997, Laidlaw violated the mercury discharge limitation in its permit 13 times and committed 13 monitoring and 10 reporting violations. In issuing its judgment, the District Court found that Laidlaw had gained a total economic benefit of \$1,092,581 as a result of its extended period of noncompliance with the permit's mercury discharge limit; nevertheless, the court concluded that a civil penalty of \$405,800 was appropriate. In particular, the District Court found that the judgment's "total deterrent effect" would be adequate to forestall future violations, given that Laidlaw would have to reimburse the plaintiffs for a significant amount of legal fees and had itself incurred significant legal expenses. The court declined to order injunctive relief because Laidlaw, after the lawsuit began, had achieved substantial compliance with the terms of its permit.

FOE appealed as to the amount of the District Court's civil penalty judgment, but did not appeal the denial of declaratory or injunctive relief. The Fourth Circuit vacated the District Court's order and remanded with instructions to dismiss the action. Assuming, arguendo, that FOE initially had standing, the appellate court held that the case had become moot once Laidlaw complied with the terms of its permit and the plaintiffs failed to appeal the denial of equitable relief. Citing Steel Co. v. Citizens for Better Environment, 523 U.S. 83, the court reasoned that the only remedy currently available to FOE, civil penalties payable to the Government, would not redress any injury FOE had suffered. The court added that FOE's failure to obtain relief on the merits precluded recovery of attorneys' fees or costs because such an award is available only to a "prevailing or substantially prevailing party" under §1365(d). According to Laidlaw, the entire Roebuck facility has since been permanently closed, dismantled, and put up for sale, and all discharges from the facility have permanently ceased.

*Held:* The Fourth Circuit erred in concluding that a citizen suitor's claim for civil penalties must be dismissed as moot when the defendant, after commencement of the litigation, has come into compliance with its NPDES permit. Pp. 8–25.

(a) The Constitution's case-or-controversy limitation on federal judicial authority, Art. III, §2, underpins both standing and mootness doctrine, but the two inquiries differ in crucial respects. Because the Fourth Circuit was persuaded that the case had become moot, it sim-

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ply assumed that FOE had initial standing. See *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 66–67. But because this Court concludes that the Court of Appeals erred as to mootness, this Court has an obligation to assure itself that FOE had Article III standing at the outset of the litigation. Pp. 8–9.

- (b) FOE had Article III standing to bring this action. This Court has held that to satisfy Article III's standing requirements, a plaintiff must show "injury in fact," causation, and redressability. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561. An association has standing to bring suit on behalf of its members when its members would have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires individual members' participation in the lawsuit. Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343. The relevant showing for Article III standing is not injury to the environment but injury to the plaintiff. To insist on the former rather than the latter is to raise the standing hurdle higher than the necessary showing for success on the merits in a citizen's NPDES permit enforcement suit. Here, injury in fact was adequately documented by the affidavits and testimony of FOE members asserting that Laidlaw's pollutant discharges, and the affiants' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests. See, e.g., Sierra Club v. Morton, 405 U. S. 727, 735. These submissions present dispositively more than the mere "general averments" and "conclusory allegations" found inadequate in Lujan v. National Wildlife Federation, 497 U.S. 871, 888, or the "'some day' intentions" to visit endangered species halfway around the world held insufficient in Defenders of Wildlife. 504 U.S., at 564. Pp. 9-13.
- (c) Laidlaw argues that FOE lacked standing to seek civil penalties payable to the Government, because such penalties offer no redress to citizen plaintiffs. For a plaintiff who is injured or threatened with injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress. Civil penalties can fit that description. Insofar as they encourage defendants to discontinue current violations and deter future ones, they afford redress to citizen plaintiffs injured or threatened with injury as a result of ongoing unlawful conduct. The Court need not explore the outer limits of the principle that civil penalties provide sufficient deterrence to support redressability, because the civil penalties sought here carried a deterrent effect that made it likely, as opposed to merely speculative, that the penalties would redress FOE's injuries— as the District Court reasonably found when it assessed a penalty of \$405,800. Steel Co. is

not to the contrary. That case held that private plaintiffs may not sue to assess penalties for wholly past violations, 523 U. S., at 106-107, but did not address standing to seek penalties for violations ongoing at the time of the complaint that could continue into the future if undeterred, see id., at 108. Pp. 13-17.

(d) FOE's civil penalties claim did not automatically become moot once the company came into substantial compliance with its permit. A defendant's voluntary cessation of a challenged practice ordinarily does not deprive a federal court of its power to determine the legality of the practice. City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289. If it did, courts would be compelled to leave the defendant free to return to its old ways. Thus, the standard for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: A case might become moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. United States v. Concentrated Phosphate Export Assn., Inc., 393 U.S. 199, 203. The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to recur lies with the party asserting mootness. Ibid. The Court of Appeals incorrectly conflated this Court's case law on initial standing, see, e.g., Steel Co., with its case law on mootness, see, e.g., City of Mesquite. Such confusion is understandable, given this Court's repeated description of mootness as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." E.g., Arizonans, 520 U.S., at 68, n. 22. Careful reflection, however, reveals that this description of mootness is not comprehensive. For example, a defendant claiming that its voluntary compliance moots a case bears a formidable burden. By contrast, it is the plaintiff's burden, in a lawsuit brought to force compliance, to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue and that the threatened injury is certainly impending. Whitmore v. Arkansas, 495 U.S. 149, 158. The plain lesson is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness. Further, if mootness were simply "standing set in a time frame," the exception to mootness for acts that are "capable of repetition, yet evading review" could not exist. See, e.g., Olmstead v. L. C., 527 U. S. \_\_\_, n. 6. Standing admits of no similar exception; if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum. See, e.g., Steel

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Co., 523 U. S., at 109. Standing doctrine ensures, among other things, that the resources of the federal courts are devoted to disputes in which the parties have a concrete stake. Yet by the time mootness is an issue, abandonment of the case may prove more wasteful than frugal. Courts have no license to retain jurisdiction over cases in which one or both of the parties plainly lacks a continuing interest, see, e.g., Arizonans, 520 U. S., at 67, but the foregoing examples highlight an important difference between the two doctrines, see generally *Honig* v. *Doe*, 484 U. S. 305, 329–332 (REHNQUIST, C. J., concurring).

Laidlaw's argument that FOE doomed its own civil penalty claim to mootness by failing to appeal the denial of injunctive relief misconceives the statutory scheme. Under §1365(a), the district court has discretion to determine which form of relief is best suited to abate current violations and deter future ones. See Weinberger v. Romero-Barcelo, 456 U.S. 305, 313. Denial of injunctive relief does not necessarily mean that the district court has concluded there is no prospect of future violations to deter. Indeed, it meant no such thing in this case; the District Court denied injunctive relief, but expressly based its award of civil penalties on the need for deterrence. A district court properly may conclude that an injunction would be too intrusive, because it could entail continuing and burdensome superintendence of the permit holder's activities by a federal court. See City of Mesquite, 455 U.S., at 289. Both Laidlaw's permit compliance and the facility closure might moot this case, but only if one or the other event made it absolutely clear that violations could not reasonably be expected to recur. Concentrated Phosphate Export Assn., 393 U.S., at 203. These are disputed factual matters that have not been aired in the lower courts; they remain open for consideration on remand. Pp. 18-23.

(e) This Court does not resolve FOE's argument that it is entitled to attorneys' fees on the theory that a plaintiff can be a "prevailing party" under §1365(d) if it was the "catalyst" that triggered a favorable outcome. Although the Circuits have divided as to the continuing validity of the catalyst theory following Farrar v. Hobby, 506 U. S. 103, it would be premature for this Court to address the question here. The District Court stayed the time for a petition for attorneys' fees until the time for appeal had expired or until any appeal was resolved. Thus, when the Fourth Circuit addressed the availability of counsel fees, no order was before it either denying or awarding fees. It is for the District Court, not this Court, to address in the first instance any request for reimbursement of costs, including fees. Pp. 23–25.

149 F. 3d 303, reversed and remanded.

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GINSBURG, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Stevens, O'Connor, Kennedy, Souter, and Breyer, JJ., joined. Stevens, J., and Kennedy, J., filed concurring opinions. Scalia, J., filed a dissenting opinion, in which Thomas, J., joined.